

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>LA TIYA BELL</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 244,543
<b>STATE OF KANSAS</b>	)	
Respondent	)	
AND	)	
	)	
<b>STATE SELF-INSURANCE FUND</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the preliminary hearing Order dated July 19, 1999, entered by Administrative Law Judge Jon L. Frobish.

**ISSUES**

This is a claim for a right knee injury. The ALJ found that claimant failed to prove she sustained an injury arising out of and in the course of her employment. Accordingly, benefits were denied.

Claimant contends the ALJ erred by finding that she failed to prove her right knee injury was work related. That is the issue for review.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Appeals Board finds:

On April 15, 1999 claimant was employed as a custodial worker at Wichita State University. On that date she was cleaning the president's house. Claimant testified that she was kneeling or squatting, cleaning the bottom of a table and as she stood up her knee popped. At first she did not think too much about it but later on the knee started swelling and hurting. Claimant said she also started to limp. Claimant said she told her supervisor, Sun Newman, about her injury and was told to go home. But claimant first went to the office of Kerry Leslie and asked if there was any office work available. Mr. Leslie told claimant no and sent her home. When claimant was asked why she had asked Mr. Leslie about office work, she testified that she was hoping for a sit-down job because her leg hurt.

Mr. Leslie is the Director of Facility Services for WSU. He acknowledged that on April 15, 1999, claimant asked for office work. Claimant alleges that office work is sometimes given as an accommodation to employees with injuries that require them to be off their feet. Nevertheless, Mr. Leslie said claimant did not inform him that she had a knee injury, she did not limp and she did not appear to be injured.

Claimant's direct supervisor, Sun Newman, testified that claimant told her she felt ill, not that she had injured her knee. Counsel for claimant contends this was a misunderstanding due to the limited English skills of Ms. Newman who is Asian/American. Counsel for claimant contends that both claimant's and respondent's counsel were forced to repeat questions and summarize Ms. Newman's answers in order to understand her testimony. But the transcript of her preliminary hearing testimony does not bear out counsel's assertion in this regard. Ms. Newman responded appropriately to the questions asked and clearly understood the difference between illness and injury.

Ms. Newman said that the next day, April 16, 1999, claimant reported her injury for the first time and was immediately sent for medical treatment at Wichita State University's Student Health Services. Those records are not in evidence. That same day claimant was also referred to the Wichita Clinic for what is shown in their records as a workers compensation injury. Claimant gave a history of injuring her right knee at work the day before. The patient information sheet describes an April 15, 1999 injury as follows: "dusting in the President's house and I bent down to dust a table when I stood up my knee popped." Claimant was diagnosed with a right knee sprain and possible fracture. She was taken off work. All of the medical records in evidence give a consistent history.

Thereafter x-rays and an MRI scan of her knee were obtained. The April 16, 1999 x-rays were inconclusive but were interpreted as showing a "probable osteochondral fracture of the anterior aspect of the medial femoral condyle." The April 22, 1999 MRI scan did not show a definite abnormality. Claimant was released to light duty May 3, 1999 with restrictions against lifting over 20 pounds and no squatting, kneeling, or stair climbing.

Claimant was then referred by respondent to orthopedic surgeon Kenneth A. Jansson, M.D., on May 3, 1999. His impression was "probable patellar dislocation." He recommended "knee sleeve with lateral pads, some Celebrex and an aggressive physical therapy regimen with some work restrictions, limiting her to primarily sitting with 20% walking and standing."

This case presents a close question. Respondent contends that the ALJ's decision was based on the credibility of the witnesses. Respondent argues that the Board should defer to the conclusions by the ALJ in this regard because he observed the witnesses testify. When the testimony of witnesses conflicts with one another, the Board generally does give some deference to an ALJ's assessment of credibility where he/she had the opportunity to view the testimony live.

Claimant's testimony is supported by the consistent descriptions of a work-related injury in the medical records starting the very next day after her alleged injury. Claimant denied having any prior right knee problems. In his Order, the ALJ acknowledged that "There is no other evidence outside of that presented which would indicate that the Claimant injured her knee in any other manner than described." Nevertheless, the ALJ was not convinced that claimant sustained a work-related injury. The ALJ was "impressed [that] there are two witnesses presented by the Respondent with consistent testimony, and in particular that Mr. Leslie was aware the Claimant had had a stroke in the past and specifically mentioned that the Claimant stated in his office that she didn't feel well and had had a stroke in the past." This testimony indicated that Mr. Leslie had a specific recollection of his conversation with claimant and supported Ms. Newman's testimony that claimant reported being sick rather than having been injured. Based upon this conflict in the record, the ALJ apparently determined claimant's testimony was the least credible and found claimant had failed to meet her burden of proof. The Board agrees with the ALJ's analysis and conclusion.

**WHEREFORE**, the Appeals Board affirms the preliminary hearing Order dated July 19, 1999, entered by Administrative Law Judge Jon L. Frobish.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1999.

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BOARD MEMBER

c: Phillip B. Slape, Wichita, KS  
Jeffery R. Brewer, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director